

frogblue AG general conditions of sale.

As at: 15 March 2018

Article 1 Scope, form

(1) These General Conditions of Purchase (GCP) apply to all business relationships between **frogblue AG**, Friedenheimer Brücke 19, 80639 Munich (hereinafter referred to as “**frogblue**”) and customers (“Buyers”) of **frogblue**. The GCP only apply if the Buyer is an entrepreneur (as defined in Section 14 BGB [Bürgerliches Gesetzbuch] (German Civil Code)), a legal person under public law or a special fund under public law.

(2) The GCP apply, in particular, to contracts of sale and/or supply of moveable items (“Goods”) regardless of whether **frogblue** has manufactured the goods itself or has purchased them from suppliers (Sections 433, 651 BGB). Unless agreed otherwise, the GCP apply as amended and valid at the time of the order placed by the Buyer, and in any case as these were last notified in writing as a framework agreement, including for similar future contracts, without **frogblue** being required to refer to them in each individual case.

(3) The **frogblue** GCP apply to the exclusion of all other terms and conditions. Any general terms and conditions of the Buyer which differ from, are contrary to or supplement these GCP shall only become an integral part of the contract if **frogblue** has expressly agreed to their validity. This requirement of consent shall apply in all cases, including if **frogblue** makes the delivery to the buyer without reservation in full knowledge of the buyer’s terms and conditions.

(4) Any individual agreements made with the Buyer in individual cases (including ancillary agreements, addenda and amendments) shall in any case take precedence over these GCP. A written contract or written confirmation by **frogblue** shall be authoritative with regard to the content of such agreements, subject to evidence to the contrary.

(5) Legally relevant explanations and notifications by the Buyer in relation to the contract (such as deadline, notice of defects, withdrawal or reduction) must be made in writing, which means in writing or text (such as letter, e-mail, fax). Legal formalities and other evidence, particularly in case of doubt concerning the legitimation of the person making the declaration remain unaffected.

(6) References to the validity of statutory provisions are for clarification purposes only. Even without such clarification, statutory provisions shall apply to the extent that they are not directly modified or expressly excluded in these GCP.

Article 2 Conclusion of contract

(1) Offers made by **frogblue** are subject to change and are non-binding. This applies even if **frogblue** has provided the Buyer with catalogues, technical documentation (such as drawings, plans, calculations,



costings and references to DIN standards), other product descriptions or documents, including in electronic format, of which **frogblue** retains ownership and copyrights.

(2) The order of goods by the Buyer constitutes a binding offer to enter into a contract. Unless otherwise provided for in the order, **frogblue** is entitled to accept this contractual offer within four weeks of its receipt by **frogblue**.

(3) This acceptance can be declared in writing (such as by order confirmation) or by delivering the goods to the Buyer.

Article 3 Delivery period and delay in delivery

(1) The delivery period shall be agreed on a case by case basis or stipulated by **frogblue** when accepting the order.

(2) If **frogblue** cannot meet binding delivery dates for reasons for which it is not responsible (unavailability of service), **frogblue** shall inform the Buyer of this immediately and at the same time specify the anticipated new delivery date. If the service is still not available by the new delivery date, **frogblue** shall be entitled to withdraw from the contract in part or in full; **frogblue** shall reimburse any consideration already paid by the Buyer. Where a case of non-availability of the service as defined herein occurs, and in particular where **frogblue**'s suppliers do not deliver in time, if **frogblue** has concluded a congruent supply contract, neither **frogblue** or its supplier shall be at fault nor will **frogblue** be obliged to source goods.

(3) The occurrence of a delay in delivery by **frogblue** is defined in accordance with statutory provisions. In any case, the Buyer must serve a notice of default.

(4) The rights of the Buyer in accordance with Article 8 of these GCP and the statutory rights of **frogblue**, particularly the exemption from the obligation to perform (such as due to impossibility or unreasonableness of the performance and/or subsequent performance) remain unaffected.

Article 4 Delivery, passage of risk, acceptance, default of acceptance

(1) Deliveries shall be made ex stock, which is also the place of performance for the delivery and any subsequent performance. At the request and cost of the Buyer, the Goods shall be sent to another destination (shipment purchase). Unless agreed otherwise, **frogblue** is entitled to determine the type of shipment (the transport company, shipment method, packaging in particular) itself.

(2) The risk of accidental loss or deterioration of the goods shall pass to the Buyer no later than upon handover to the Buyer. Where shipment is purchased however, the risk of accidental loss and of accidental deterioration of the goods and the risk of delay shall pass to the Buyer upon delivery of the goods to the forwarding agent, carrier or other person or establishment appointed to perform the shipment. Where an acceptance procedure is agreed, this shall determine the passage of risk. The statutory provisions on contracts for work and services also apply in all other respects where an acceptance procedure is agreed. The transfer and/or acceptance shall be deemed to have taken place if the Buyer delays in accepting the goods.



(3) If the Buyer delays in accepting the goods, fails to cooperate or if our delivery is delayed for other reasons for which the Buyer is responsible, **frogblue** shall be entitled to claim damages resulting from the delay including all additional expenses (such as storage costs). For this **frogblue** shall charge a flat rate compensation in the amount of 1% of the net price of the goods per calendar day, beginning on the delivery date or - in the absence of an agreed delivery date - upon notification that the goods are ready for shipment.

The right of **frogblue** to provide evidence of higher damages and to make statutory claims (reimbursement of additional expenses, appropriate compensation and termination) remain unaffected; the flat rate is however to be offset against further monetary claims. The Buyer reserves the right to prove that **frogblue** did not suffer any damages at all or only substantially less damages than the aforementioned flat rate.

Article 5 Prices and terms of payment

(1) Unless otherwise agreed in an individual case, the current prices of **frogblue** applicable at the time of concluding the contract shall apply, and shall apply ex stock subject to statutory VAT.

(2) Where shipment is purchased (Article 4(1)), the Buyer shall assume the transportation costs ex stock and the costs of any transportation insurance requested by the Buyer. Any customs duties, fees, taxes and other public charges shall also be borne by the Buyer.

(3) The purchase price shall be due and payable within 14 days from invoicing and delivery and/or acceptance of the goods. However, **frogblue** shall be entitled at any time to only perform a full or partial delivery against advance payment, including as part of an ongoing business relationship. **frogblue** shall declare such a reservation no later than upon confirmation of order.

(4) The Buyer shall be in default upon expiry of the above payment term. During the period of delay, the purchase price shall be subject to interest at the applicable statutory rate. **frogblue** reserves the right to claim any additional default damages. Our entitlement to commercial maturity interest (Section 353 HGB [Handelsgesetzbuch] (German Commercial Code)) remains unaffected where the Buyer is a business.

(5) The Buyer is only entitled to offsetting or retention rights to the extent that their entitlement has been legally established or is undisputed. In case of defects in delivery, the Buyer's counter-right particularly pursuant to Article 7(6) sentence 2 of these GCP shall remain unaffected.

(6) If there are indications after concluding the contract that **frogblue's** entitlement to the purchase price is at risk due to a lack of solvency on the part of the Buyer (e.g. application for opening of insolvency proceedings) then according to the statutory provisions **frogblue** is entitled to refuse service and - if applicable after setting a deadline - to withdraw from the contract (Section 321 BGB). In case of contracts for the manufacture of specific items (making to specification) **frogblue** can withdraw immediately; this shall not affect the statutory provisions concerning the dispensability of setting a deadline.

Article 6 Reservation of title



- (1) Until full payment of all current and future claims of **frogblue** under the purchase contract and within an ongoing business relationship (secured claims), **frogblue** shall reserve ownership of the goods sold.
- (2) The goods subject to the reservation of title may not be pledged to third parties or assigned as security until full payment of the secured claims. The Buyer must immediately inform **frogblue** in writing if an application for opening of insolvency proceedings is made or in case of third party access (such as pledges) to the goods belonging to **frogblue**.
- (3) If the Buyer acts in a manner that is contrary to the contract, particularly in the event the purchase price due is not paid, **frogblue** shall be entitled to withdraw from the contract in accordance with statutory provisions or/and request the return of the goods on the basis of the reservation of title. The handover request does not also comprise a declaration of withdrawal; **frogblue** shall rather be entitled to only request the return of the goods and to reserve the right of withdrawal. If the Buyer does not pay the purchase price due, **frogblue** may only assert these rights if **frogblue** has previously set the Buyer a deadline for payment without effect or if such a deadline is unnecessary in accordance with statutory provisions.
- (4) The Buyer is authorised to resell and/or process the goods subject to the reservation of title in the normal course of business until revocation pursuant to (c) below. In this case, the following provisions also apply.
- (a) The reservation of title extends to the products resulting from the processing, mixing or combination of our goods to their full value, whereby **frogblue** shall be deemed to be the manufacturer. Where the goods are processed, mixed or combined with goods of third parties still have ownership rights, **frogblue** shall acquire co-ownership in the ratio of the invoice value of the processed, mixed or combined goods. In all other respects, the same applies to the resulting product as for the goods supplied under reservation of title.
- (b) The Buyer as of now assigns claims against third parties resulting from the resale of the goods or the product to **frogblue** in full or to **frogblue**'s co-ownership share in accordance with the above paragraph on security. **frogblue** accepts the assignment. The obligations of the Buyer mentioned in paragraph 2 also apply with regard to the assigned claims.
- (c) The Buyer shall remain authorised to collect the claim in addition to **frogblue**. **frogblue** undertakes not to collect the claim as long as the Buyer meets their payment obligations to us, as there is no limited ability to perform and **frogblue** does not asset its reservation of title by exercising a right pursuant to paragraph 3. If this is the case, **frogblue** can request that the Buyer discloses the assigned claims and their debtors, makes all the necessary declarations for the collection, provides the associated documents and notifies the assignment to the debtors (third parties). **frogblue** is in this case entitled to revoke the Buyer's authority to resell and process the goods subject to reservation of title.
- (d) Should the realisable value of the securities exceed **frogblue**'s claims by more than 10%, **frogblue** shall, on the request of the Buyer, release securities at the choice of **frogblue**.

Article 7 Defect claims of the Buyer



- (1) Unless provided for otherwise, statutory provisions shall apply for the rights of the Buyer concerning material and legal defects (including incorrect and shortfalls in delivery and improper assembly or defective assembly instructions). In all cases, special statutory provisions for the final delivery of unprocessed goods to an end consumer remain unaffected, even if they have processed them (recourse of the entrepreneur pursuant to Section 478 BGB). Claims under recourse of the entrepreneur are excluded if the defective goods have been processed by the Buyer or another entrepreneur, such as by building it into another product.
- (2) The agreement reached on the quality of the goods shall above all form the basis for the defect liability of **frogblue**. All product descriptions which are the subject of the individual contract or which are publicly disclosed by **frogblue** (particularly in catalogues or on the **frogblue** website) are deemed to be agreements on the quality of the goods.
- (3) If the quality was not agreed, statutory provisions required an assessment of whether there is a defect or not (Section 434(1) sentences 2 and 3 BGB). **frogblue** shall assume no liability for any public statements made by the manufacturer or other third parties (such as advertising statements).
- (4) The defect claims of the Buyer assume that the Buyer has met their statutory obligations to examine and report (Sections 377, 381 HGB [Handelsgesetzbuch] (German Commercial Code)). If a defect emerges upon delivery examination or at a later time, **frogblue** must be notified of this in writing immediately. In any case, visible defects must be reported within five working days of delivery, and defects not visible upon examination must be reported within the same period from discovery. If the Buyer neglects to undertake a proper examination and/or notice of defect, **frogblue**'s liability for any defect which was not reported or not promptly or properly reported under statutory provisions is excluded.
- (5) If the item delivered is defective, **frogblue** can initially choose whether **frogblue** rectifies by remedying the defect (rework) or by supplying a defective free item (replacement delivery). **frogblue**'s right to refuse rectification under legal conditions remains unaffected.
- (6) **frogblue** is entitled to make the rectification dependant on the Buyer paying the purchase price due. However, the Buyer is entitled to retain an appropriate portion of the purchase price in relation to the defect.
- (7) The Buyer must provide **frogblue** with the required time and opportunity to perform the correction, particularly to return the disputed goods for examination purposes stating a return number previously provided by **frogblue**. In case of a replacement, the Buyer must return the defective item in accordance with statutory provisions. The correction comprises neither the dismantling of the defective item or the remounting, if **frogblue** was not originally required to mount the item.
- (8) The outlay required for the purposes of examination and correction, particularly transport, infrastructure, labour and material costs as well as dismantling and mounting costs shall be borne or reimbursed by **frogblue** in accordance with statutory provisions, if there is an actual defect. Otherwise, **frogblue** can request that the Buyer reimburse any unjustified request for the rectification of a defect (examination and transportation costs especially), unless the lack of a defect was not detectable for the Buyer.



(9) If the correction fails or any appropriate deadline set by the Buyer for correction has expired without success or if it is unnecessary according to statutory provisions, the Buyer can withdraw from the purchase contract or reduce the purchase price. However, there is no right of withdrawal when there is a minor defect.

(10) Claims of the Buyer to damages and/or compensation for unnecessary expenses also exist for defects only in accordance with Article 8 and are otherwise excluded.

Article 8 Other liability

(1) Unless otherwise provided for in these GCP including the following provisions, **frogblue** shall be liable in accordance with statutory provisions in the event of a breach of contractual and non-contractual obligations.

(2) **frogblue** shall be liable for damages, regardless of the legal basis, as part of the fault-based liability in case of intent and gross negligence. In case of simple negligence, **frogblue** shall be liable in accordance with statutory provisions subject to a milder standard of liability (such as for due care in one's own affairs) only for

a) for damage from injury to life, body and health,

b) for damage from a major breach of an essential contractual obligation (obligation without which it could not be possible to perform the contract in the first place and in which the contractual parties may normally trust); in this case, **frogblue**'s liability is limited to compensation for the foreseeable and typically occurring damage.

(3) The liability limitations under paragraph 2 also apply to breaches of obligations by or on behalf of persons whose fault is attributable to us under statutory provisions. They shall not apply if **frogblue** fraudulently conceals a defect or has assumed a warranty for the quality of the goods and for the Buyer's claims under product liability law.

(4) In the event of a breach of duty that does not lie in a defect, the Buyer may only withdraw or terminate if **frogblue** is responsible for the breach of duty. A free right of termination by the Buyer (particularly pursuant to Sections 650 and 648 BGB) is excluded. In all other respects, the statutory provisions and legal consequences apply.

Article 9 Limitation period

(1) By derogation from Section 438(1)(3) BGB, the general limitation period for claims for defects in quality and title is one year from delivery. If an acceptance procedure is agreed, the limitation period shall commence upon acceptance.

(2) If the goods are a building or a thing that has been used for a building in accordance with the normal way it is used and has resulted in the defectiveness of the building (building material), the limitation period shall be 5 years from delivery in accordance with the statutory provision (Section 438(1)(2) BGB). Other special statutory provisions on the limitation of claims (particularly Section 438(1) No. 1 and (3), Sections 444, 445 b BGB) remain unaffected.



(3) The above limitations on claims for purchase rights also apply to the Buyer's contractual and non-contractual claims for damages relating to a defect in the goods, unless the application of the regular statutory limitation period (Sections 195, 199 BGB) would provide for a shorter limitation period in that specific case. The Buyer's claims for damages pursuant to Article 8(2) sentences 1 and 2 (a) as well as under product liability law shall, however, only become statute-barred in accordance with statutory limitation periods.

Article 10 Applicable law and jurisdiction

(1) These GCP and the contractual relationship between us and the Buyer shall be governed by the laws of the Federal Republic of Germany to the exclusion of the UN United Nations Convention on Contracts for the International Sale of Goods.

(2) If the Buyer is an entrepreneur as defined by the German Commercial Code, a legal entity under public law or a special fund under public law, the sole legal venue, including for international proceedings, for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Munich. The same applies if the Buyer is an entrepreneur as defined by Section 14 BGB. **frogblue** is, however, entitled in any case to bring action at the place of performance of the delivery obligation in accordance with these GCP or an overriding individual agreement or at the general legal venue of the Buyer. Overriding statutory provisions, particularly on exclusive competence, remain unaffected.

